City of Lafayette Staff Report

For:	City Council
By:	Michael P. Cass, Assistant Planner
Date Written:	April 22, 2009
Meeting Date:	April 27, 2009
Subject:	Amending 2009 Lafayette Stimulus Package Relating to Existing Small Businesses, Hours of Operation, and Parking Requirements

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Background
On August 12, 1999, the Lafayette Planning Commission conditionally approved a Shared Parking Request, reducing the total number of required parking spaces for a proposed restaurant, located at 960 Moraga Road. Notable conditions of approval include the following:

1. The operation of a restaurant in Space A shall be limited to the hours after 5:30 PM on weekdays and Saturdays. There are no restrictions on Sundays.

On April 13, 2009, the City Council considered the Chamber of Commerce's request to: (1) amend the 2009 Lafayette Stimulus Plan to waive the parking requirements for existing small businesses (under 1,500 sq. ft.) and (2) lease the existing Lafayette Library parking spaces to Chevalier Restaurant after the new Lafayette Library and Learning Center opens and the City assumes ownership of the property. The Council continued the matter to April 27, 2009 and provided the following direction:

Council Direction	Applicant Response / Staff Comments
Direct staff to prepare an approval resolution to modify the 2009 Lafayette Stimulus Plan.	The City Attorney prepared the resolution as directed. Refer to Attachment A.
Direct staff to research other affected businesses and impacts.	Staff believes that the resolution, as drafted, is narrowly focused and is unaware of other affected businesses.
Notify additional tenants on subject property.	The business owners submitted written support from Marshall Steel Cleaners (Attachment D). Sew Now! indicated that they are not supportive of the request at this time as they require additional understanding of the potential impacts and request a long-term solution (Attachment E). At the time this staff report was prepared, no written support was submitted by Flipper Burgers.

Existing Parking Requirements
The subject property currently has twenty-three (23) parking spaces and one (1) ADA parking space. The subject property requires forty-eight (48) parking spaces if outdoor dining area is included and approximately thirty-eight (38) parking spaces if outdoor dining area is excluded from the requirement.

8B

Refer to the attached Parking Analysis Table, prepared by Thomas Jajeh, Property Manager, on October 4, 2007 (Attachment F). The subject property is deficient by approximately 14 parking spaces.

Recommendation
Discuss and direct staff.

Attachments

A. Draft City Council Resolution #2009-26
B. Shared Parking Approval Letter, dated August 13, 1999
C. Draft City Council Minutes, dated April 13, 2009
D. Chevalier Restaurant Letter & Photographs, dated April 17, 2009
E. Sew Now! Letter, received April 21, 2009
F. Parking Analysis Table

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

A Resolution of the City Council of the City of Lafayette Amending the the Lafayette Stimulus Package relating to Existing Small Businesses and Hours of Operation and Parking Requirements	)))))	Resolution 2009-26

WHEREAS, the City of Lafayette ("City") has been negatively impacted by the economic downturn currently plaguing California;

WHEREAS, the economic downturn has created a ripple effect across the community, causing reduced business revenues and a slowdown in the development of property;

WHEREAS, to encourage business and development of property within the City during this economic downturn the City Council adopted Resolution 2009-13, which created the Lafayette Stimulus Package; and

WHEREAS, the City desires to amend the Lafayette Stimulus Package to assist certain small existing businesses of 1,500 square feet or less.

NOW THEREFORE BE IT RESOLVED THAT:

Section 1. Hours of Operation and Parking Requirements. As long as this Resolution remains in effect, the parking requirements for businesses of 1,500 square feet or less that are in existence and are legally operating in compliance with local, state, and federal law as of the effective date of this Resolution that limit the hours of operation of the business to evening hours shall not be enforced if the business owner executes an agreement in a form approved by the City Attorney which shall include, but is not limited to the following: acknowledgement of the limited timeframe of this Resolution; indemnification of the City from any claim brought as a result of this Resolution; and agreement to pay for any costs associated with the City's enforcement of any City requirements once this Resolution no longer remains in effect.

Section 2. Prospective Application and Effective Date. The provisions of this Lafayette Stimulus Package as set forth in this Resolution shall apply prospectively from the effective date of this Resolution until December 31, 2009, except as otherwise set forth in this Resolution, and unless a later enacted resolution or ordinance terminates, shortens or extends that period.

Section 3. California Environmental Quality Act. The proposed action is exempt from the California Environmental Quality Act (CEQA) because, pursuant to Title 14 of the California Code of Regulations section 15304, CEQA does not apply to actions when there is a minor temporary use of the land that has negligible or no permanent effects on the environment.

Section 4. Effective Date. This Resolution shall become effective upon its adoption.

PASSED AND ADOPTED by the City Council at a meeting of said Council on April 27, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Don Tatzin, Mayor

LAFAYETTE
SETTLED 1848 — INCORPORATED 1968

CITY COUNCIL
Erling Horn, Mayor
Jay Strauss, Vice Mayor
Anne Grodin
Ivor Samson
Don Tatzin

August 13, 1999

Fred Seely
Cardoza Properties, Inc.
1111 Civic Drive, Suite 365
Walnut Creek, CA 94596

Dear Mr. Seeley:

On August 12, 1999 the Lafayette Planning Commission considered your following application:

Shared Parking Request – Fred Seeley, Cardoza Properties, Inc. Rino Di Gianvincenzo (Applicants) Marion Imperatrice & Nan White (Owners), RB: Request for a reduction in total number of required parking spaces per Section 6-608 of Lafayette Municipal Code for a proposed restaurant (operating at evening hours only) to share 24 on-site parking spaces with other tenants (operating daytime hours) located at 960 Moraga Rd. APN 243-222-001.

The Commission took the following action on the application:

X Approved it subject to the following list of conditions:

1. The operation of a restaurant in Space A shall be limited to the hours after 5:30 PM on weekdays and Saturdays. There are no restrictions on Sundays.

2. If there is a change of tenants, or hours of operation or of use in the center from that listed in the letter from Cardoza Properties dated July 14, 1999, on file at the City offices, the owner shall submit a written request in advance of the change to the City, demonstrating that the center meets the parking requirements based on the Lafayette Parking Ordinance. Any change that increases the parking requirements shall require approval of the Planning Commission.

There is a 14 day appeal period in which this action may be appealed to the City Council.

(V30-99 FOR TRACKING / ARCHIVE PURPOSES. 2006.06.14)

POST OFFICE BOX 1968
3675 MT. DIABLO BLVD., SUITE 210, LAFAYETTE, CA 94549-1968
TELEPHONE: (925) 284-1968 FAX: (925) 284-3169
http//:www.ci.lafayette.ca.us

Fred Seeley August 13, 1999

If you have any questions or comments concerning this matter, please contact me at the Planning Services Division, 284-1976 between the hours of 8:30 a.m. to 11:30 a.m. and 1:30 p.m. to 4:30 p.m.

Sincerely,

Michael Henn
Planning Services Manager

cc: PDC, file,
Rino Di Gianvincenzo, 3476 Moraga Blvd., Lafayette
Thomas Del Beccaro, 3728 Sundale Rd. Lafayette
Marion Imperatrice - Nan White, 1127 Sherman St., Alameda, CA 94501

B. Letter dated March 26, 2009 from Janet Madrigal, Clerk to the Board, Central Contra Costa Transit Authority Board of Directors, requesting Council appoint a Director and Alternate for a two-year term.
Recommendation: Discuss and direct staff.

Mayor Tatzin said former Mayor Horn is willing to continue and he is willing to continue as Alternate.

ACTION: It was M/S (Anderson/Federighi) to re-appoint Erling Horn as Director and Don Tatzin as Alternate for a two-year term to the Central Contra Costa Transit Authority Board of Directors. Vote: 5-0.

C. Letter dated April 2, 2009 from Jay Lifson, Executive Director, Lafayette Chamber of Commerce, requesting Council consideration 1) Amend the 2009 Stimulus Plan to waive parking requirements for existing small businesses under 1500 square feet 2) Permission to lease the current Lafayette Library parking spaces to Chevalier once the new library opens and city assumes ownership of said property.
Recommendation: Discuss and direct staff.

Public Comments:

JAY LIFSON said he sent letters to the Council hoping to be agendized and thanked the Council for having it heard. The Chamber thanks the Council and staff for coming up with the stimulus package to help small businesses. He asked again to use some compassion in their request to add one more item to the package—to allow small businesses to waive or reduce parking requirements currently in place in order to improve business. He referred to Chevalier Restaurant which opened last year on Moraga Road. Their lease prohibits them from opening for lunch, which has been difficult for the owner. Mr. Chevalier came to the Chamber for help to find parking and nothing has panned out with the economy getting worse. His business has since dropped 40%, he has been monitoring spaces in his lot and there are always spaces during the lunch hour that are vacant, but per requirements, he does not qualify to be able to open. He said for businesses that are 1,500 square feet or less through December 31st, the Council consider waiving parking requirements so a business can make it through the year.

Vice Mayor Andersson questioned how many other businesses would fall under this category, and Mr. Lifson said he was not sure if there were any, but they were approached by the Chevalier's and want to try and help. He said when the Library closes, he has suggested that the Chevalier's contact the City to secure some spots in their parking lot.

Councilmember Federighi questioned if this would allow other restaurants that cannot open for lunch or businesses that has purchased a business but now cannot open due to not being grandfathered in after 120 days. Mr. Lifson said the Council made it clear that it would not go back in time for that requirement; and this year the Council was waiving the 120 days as long as they notified the City and any changes were done before the end of the year. He did not have another business designated that would benefit from this program.

Councilmember Federighi questioned if other merchants have been notified. Mr. Lifson said he has not, but said there was a good review of the number of spaces during the day which revealed 6-10 spaces to be used. Other businesses use the parking lot at night when they are open, and he said there is always ample parking there. Councilmember Federighi said she did not believe it would be fair to other merchants unless they agree to it, because it could impact their businesses.

She questioned who it was had offered their lot and she questioned if there were spaces available there.

Mr. Lifson said this lot is at Lafayette Circle, which operationally could not work due to its distance from the restaurant, and the lot is being used by Postina Restaurant at this time. Mr. Lifson said they went to all property owners to use the lot and Chevalier was denied at that time.

Councilmember Anduri questioned if this was a lease or regulation issue. Mr. Lifson said it is a regulation issue as well as a lease issue, because the lease states they cannot open for lunch due to non-use of parking during the day.

BRIAN MULRY, Gagen McCoy, Danville, said he has worked with Allen Moore and they have not yet looked at the lease. Their procedural concern is that if there is any decision that would negatively impact Philippe Chevalier, who they represent, that no final decision be made tonight and they be given an opportunity to work with City staff, go to the Planning Commission and have an appeal opportunity. They would like to see a favorable decision, and it is his understanding that they would need about 12 spots in addition to what they have, but they have not yet reviewed the lease.

Mayor Tatzin said any action the Council takes would only be favorable.

GILBERT SONET said he is the former owner of Chevalier's restaurants in Danville, Walnut Creek and Pleasanton, and said before Walnut Creek built up parking along Main Street, they have been very successful, but they could not stay open due to only having a few parking spots in front of the restaurant. He said Philippe and his family live in Lafayette, they want to be part of the community, and asked for a chance to keep his business open. He said the requirement is not contained in the lease, but only because of the City's regulations that he cannot open during lunch.

MICHAEL HELLER said it is nice to see a nice French restaurant in town, to have someone who lives and participates in the City, buys a house here, knows it is difficult for the City to make exceptions but the family brings something great to the City and he asked for approval of the request.

Councilmember Federighi confirmed Mr. Heller did not discuss it with any other merchants.

GRETCHEN CHEVALIER, introduced her husband, Philippe, assured the Council they have done everything they can to ensure the success of their restaurant, they have been well received, have had terrific reviews, take part in local events, responded to the economic downturn by offering a fixed price menu, have tried to adapt and feeling that the lunchtime service is what saves their business. Personally, she would not ask this if they believed it would create a hardship for any other business. There are 3 hours between 5-8 p.m. when all four businesses are opened with sufficient parking during the evening hours and during the lunch service, a minimum of 10 spaces would be available and they would need 11 to open for lunch. The remaining spaces are occupied by employees and they would have their employees park outside the lot, causing no impact to business neighbors. They have to turn down lunch reservations every day and is confident opening for lunch would help their business tremendously.

Mayor Tatzin questioned what their long-term solution would be to the problem and Ms. Chevalier said they will need to piece this together and hopefully have good news over the next months. They toyed with the idea for a library space, which would be temporary until they find a more

permanent space, but if they could get through December, it would help their business but they will cross that bridge once they come to it.

Councilmember Anderson questioned if the issue was a City ordinance versus the lease and questioned if they approached neighbors for their support.

Ms. Chevalier said it was a City ordinance and they have the support of the property owner and manager. They agree with the need to would check with neighboring businesses, but thus far, they have documented what they have found as existing available spaces in the lot. Councilmember Anderson suggested getting something in writing from neighbors, and noted this would affect all businesses in the City, so it is a little more complicated.

Councilmember Federighi said the attorney has asked that the decision be postponed, but Mayor Tatzin noted he was willing to allow the Council to approve it as well. Councilmember Federighi asked that it be continued because she felt it was critical to notify other businesses and get a response from them, and Ms. Chevalier said she understood this.

JESSE WELLEN, Chamber of Commerce Boardmember, owner of the Lafayette Car Wash, said he has been to every restaurant and often to Chevalier which has great food and ambience, it is one of the best restaurants in town and people come from far away to eat there. He acknowledged parking issues in town which makes it tough for a merchant, but we are in an economic recession with 8-9 empty stores, and he said if not allowed, they will have another vacancy.

Councilmember Federighi questioned if other businesses who might be in a similar position, and Mr. Wellen said he did not know of any.

DENNIS EROKAN said during the day, he runs a company that markets cities and towns and is on the Board of the Downtown Association. Every downtown states there is not enough parking, yet the world continues. Secondly, one of the biggest brand negatives of a downtown is closed restaurants. He spoke of the great restaurants in Lafayette, and supported the request, and said he would be glad to come up with a space for them.

Mayor Tatzin questioned how long it would take for the restaurant to open for lunch if approved, and Ms. Chevalier said they could open tomorrow.

City Attorney Subramanian said she recommended bringing back a resolution and would need to determine whether CEQA applies because of the loss of the parking currently required and its impacts.

Councilmember Anduri supported the request and cited decreased economic activity, but said in order to do it, at the next meeting the Chamber should publicize this to all businesses as there may be problems associated with it. He asked if staff should contact the tenants next to the restaurant and suggested there be notice of the request. Mr. Falk recommended the Council direct Mr. Chevalier to obtain written permission from each of the other tenants and bring it to the Council at the next meeting.

Councilmember Anduri questioned if this was something the other tenants could veto, and felt it was more of a public policy issue. Mayor Tatzin said the request is to change the City's policy which could affect other businesses, and acknowledged the proposal was only to the end of the

year. He also said it was also too early to discuss leasing spaces at the old library and encouraged the Chevalier's to find other alternatives.

Councilmember Anderson confirmed that the Council is directing staff to return with a resolution and in the process, there may be a chance for investigation as to the impacts across the City, and the recommendation should take this into account.

Mr. Falk said there are more 1,500 square foot vacancies in town, and staff would need to identify whether this would apply to a new tenant seeking to move into a vacant space as well. Ms. Subramanian confirmed; however, that this only applied to existing businesses and not someone starting a new business.

ACTION: It was M/S (Anderson/Andersson) to continue the item to April 27, 2009, direct staff to return with a resolution that would adopt the policy, return with information on potential other affected businesses and impacts, waiving the parking requirements for certain categories of businesses as part of the City's economic stimulus package through the end of 2009. Vote: 5-0.

Councilmember Anduri said he believes that anyone who takes advantage of this should sign the acknowledgement that it only last through the end of the year.

D. Letter dated April 6, 2009 from Mary Ann Hoisington, Contra Costa County Library Commissioner, thanking the council for their continued support of the Lafayette Library & Learning Center.
Recommendation: Receive and file.

ACTION: The Council received and filed the request.

Convene Redevelopment Agency

ACTION: It was M/S (Andersson/Anderson) to convene the Redevelopment Agency. Vote: 5-0.

14. CLOSED SESSION

A. Conference with Real Property Negotiators (Government Code Section 54956.8)
Property: APN 241-010-031 (Risa Road)
Agency Negotiator: Steven Falk, City Manager/Executive Director
Negotiating Parties: Steven Falk, Ann Merideth, Niroop Srivatsa
Under Negotiation: Price and Terms of Payment

Adjourn Redevelopment Agency

ACTION: It was M/S (Andersson/Anderson) to adjourn the Redevelopment Agency. Vote: 5-0.

REPORT ON CLOSED SESSION:

Mayor Tatzin announced direction was given to staff in Closed Session.

CHEVALIER
RESTAURANT

April 17, 2009

Dear Fellow Business Owner at 960 Moraga Road,

Chevalier Restaurant is in the process of working with the City of Lafayette in order to obtain approval to operate our business during the lunch hours of 11:00-2:00, Tuesday through Saturday. As your neighbor we of course want to inform you of our efforts and also ask for your support.

We've monitored the parking lot closely over the past month and taken photos (attached) each hour from 11:00 to 2:00 for a period of 2 ½ weeks. We did this in an effort to verify the availability of sufficient parking to support our lunch service. We found that on average there were 6-9 available parking spaces during these hours. Many of the occupied spaces were utilized by employees of the 960 Moraga complex during these hours (those cars are circled in the attached).

Should we open for lunch *Chevalier* will certainly do its' part to insure maximum parking availability during the hours 11:00-2:00. Currently, though we do not operate our business during those hours, we generally have 3-4 employee cars in the lot starting in the late morning. *Chevalier* will instruct its employees to park outside of the 960 Moraga lot during lunch service. This will free up another few parking spaces in addition to the above 6-9 average available spaces.

We expect that a significant portion of our lunch service will be walk-ins from neighboring businesses. The addition of a lunch service will only bring more attention to the other businesses of 960 Moraga Road and affect us all in a positive manner.

Warm Regards,

Philippe & Gretchen Chevalier
Chevalier Restaurant

Phin owner	Marshall Steel/Cleaners business name
owner	business name
owner	business name

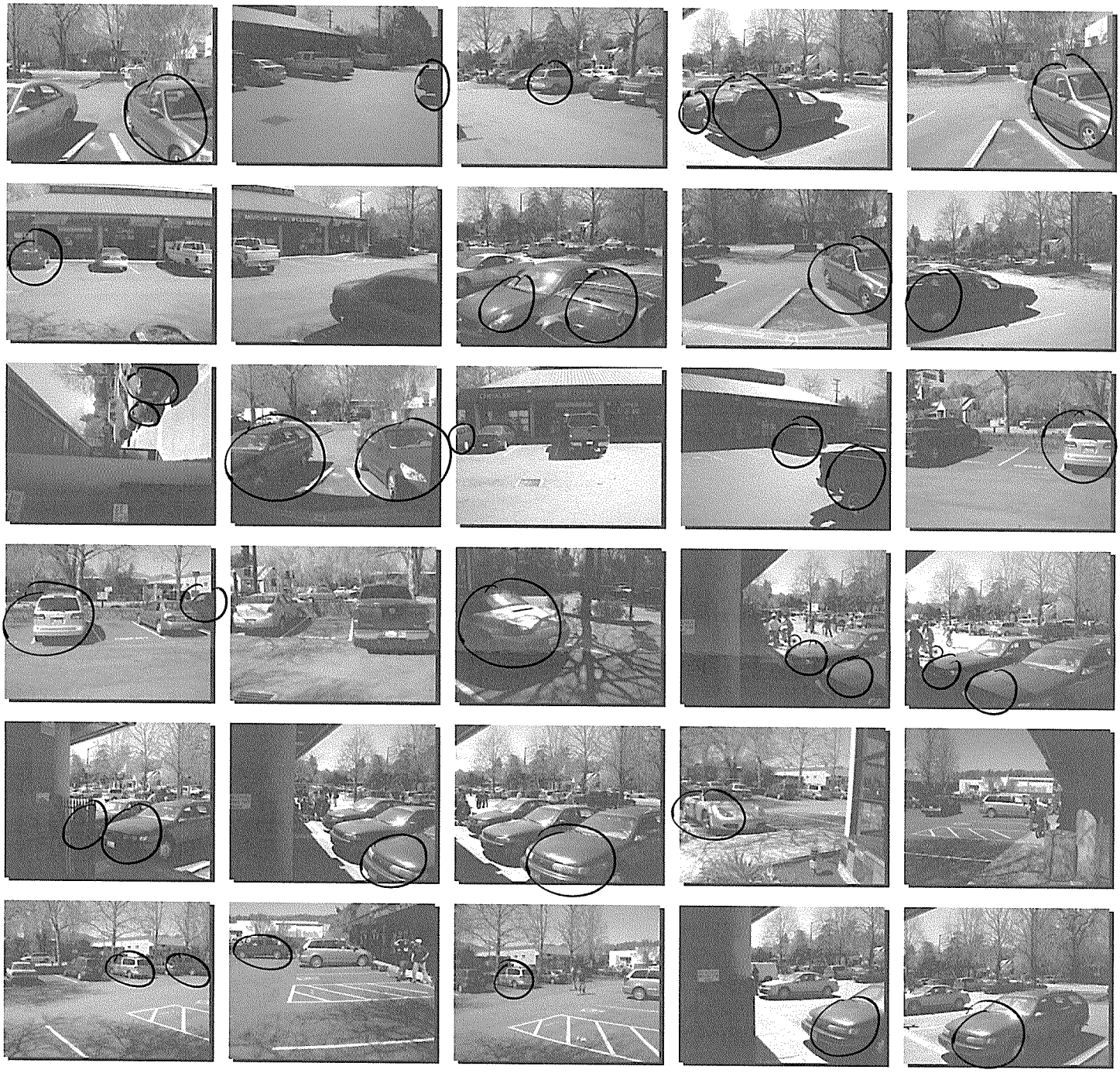
960 Moraga Road Lafayette, CA 94549 • Phone: 925.385.0793 • Fax 925.385.0794
www.chevalierrestaurant.com

Attachment D

employee cars are circled

Parking at 960 Morgan Rd between 11:30 am - 3:10 pm 3/14 - 3/21

Parking lot at 9100 Monaco Rd btw. 11:30 am - 3:00 pm 3/16-3/20 (2)



3/16-3/29

Parking Lot at 960 Morasa Rd btw 11:30am - 3:00pm (3)

sewnow!
fashion studio

RECEIVED
APR 2 1 2009
CITY OF LAFAYETTE

April 21, 2009

Dear Philippe and Gretchen,

Although we would like to be supportive of Chevalier obtaining Lafayette City approval to operate during lunch hour Tuesday through Saturday, we do not feel we have been given ample time to consider the impact on the parking lot and our business, particularly during the summer months when we operate our summer camp program.

As well, as we all discussed this morning when you dropped off the letter, we are all frustrated on an almost daily basis by the presence of loitering teens and pre-teens in the parking lot who skateboard, set up ramps, block parking spots, treat our customers rudely, and who also litter in the parking lot.

We feel that a total parking lot solution is necessary, and we are willing to work with all of the merchants at 960 Moraga Rd., Cardoza Property Management, and the City of Lafayette to create a total parking lot solution that would provide for all of our customer parking needs (short versus long term, customer versus employee, etc.) and that would definitely benefit all of the merchants at 960 Moraga Rd.

Regards,

S. Goldie

Susan Goldie

sewnow! 960 Moraga Rd. Lafayette, CA 94549

ph:925-283-7396 email:susan@sewnow.com

cc:Thomas Jajeh, Cordoza Properties

Prepared 10/4/07
Thomas Jajeh, Property Manager
Cardoza Properties, Inc

Parking Analysis
960 Moraga Road
JD Properties

Address	Business Name	Business Hours	Use Classification	Sq. Ft.	Net Floor Area	Kitchen Sq. Ft.	Gross Dining Area	Outdoor Dining Sq Ft	Parking Per 6.641	Required
960 Moraga Rd	The Patio	5pm - 10pm Mon - Sun	(r) Full service rest.	1285	1035	620	414.12	394	1 per 45 Gross Dining Area + 1 per 500 gross kitchen)	19.20
960 Moraga Rd	Flippers	6:30am - 8pm Mon - Sun	(p) Fast-food	1808	1408	1000	216	60	1 per 100 Gross Floor Area (-seating) + 1 per 45 indoor & outdoor seating	21.48
960 Moraga Rd	Marshall Steel Cleaners	Mon - Fri - 6am - 7pm. Sat 9am - 5 Sun Closed	(i) Commercial Laundry	1481	681				1 per 250 Net Floor Area	2.72
960 Moraga Rd	Sew Now	Mon - Sat 9 - 5, Sun Closed	(u) General Personal Service	1667	1067				1 per 250 Net Floor Area	4.27
								Total - SewNow, Marhall and Flippers:		28.47
								Total - Patio* - Hours Restriction		19.2
								Grand Total		47.67

Spaces in Lot	23 spaces + 1 Handicap with Ramp

Attachment F